

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re PATENT application of) Confirmation No.: 9260
Paul S. Enfield)
Application No. 09/902,923) Examiner: Elaine Gort
Filed: July 10, 2001) Group Art Unit: 3687
For: INFORMATION, DIRECTORY,)
LOCATION AND ORIENTATION)
SYSTEM FOR RETAIL STORES)
AND THE LIKE) Date: April 26, 2010

REPLY BRIEF PURSUANT TO 37 C.F.R. § 41.41

MAIL STOP APPEAL BRIEF – PATENTS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellant respectfully submits this reply brief in response to the Examiner's Answer, mailed on February 26, 2010.

Supplemental Arguments

In the Response to Argument section of the Examiner's Answer (hereinafter, "the Answer"), at pages 13-20, several newly presented points were raised and are now addressed:

Ramey Teaches Away from the Claimed Invention

On page 19, section g) of the Answer, in response to Appellant's arguments presented in the section entitled: "Ramey Teaches Away from the Claimed Invention" that spans pages 12 to 13 of the Appeal Brief, the Examiner makes the following statements:

Examiner agrees that Ramey is geared to locating every single molding, but that the sign shown in figure 7 does not locate every single molding and this is the sign used to provide customers with a "memory hook". Just because Ramey has additional locating features does not mean that it does not meet the Appellants claim limitations. The sign shown in figure 7 does provide a display with only a small fraction of the products in that aisle so that there is a large number of other products which are related products which would be assumed as being likely in that same aisle. Such as other types/styles of base, chair or crown trim.

However, it is impermissible for the Examiner to consider the sign in Figure 7 in isolation without considering the whole of the Ramey reference because doing so ignores other portions of that reference that *would have led away* from obviousness. As explained in pages 7-8 and 12-13 of Appellant's Appeal Brief, the Ramey patent is directed to a system that is fundamentally different from the signs and store facility defined in Appellant's independent claim 17. The embodiment shown in Figures 6 and 7 of Ramey relied upon in isolation by the Examiner is but an extension to the embodiment described in Ramey in connection with Figures 1-5 (see, column 8, lines 8-11 of Ramey). As described in column 8 of the Ramey patent, color indicators 76, 80 are utilized for each kind item shown in the sign G of Figures 6 and 7, and the color indicator to a more detailed listing of types of mouldings of the color indicated moulding kind to direct a customer to its specific location in the display. Hence, the sign G shown in Ramey's Figures 6 and 7 is but an entry level part of an elaborate indexing system that identifies for a customer exactly where to find in the display each type of moulding item. By contrast, the claimed invention includes a plurality of signs, each of which includes **plural different brand name representations** (which the Ramey system does not). The number of the **different brand name product representations** in the display signs are, at most, a relatively small fraction of the number of location related products in the aisle that is associated with that display sign, with a substantial portion of the **brand name product representations** on the display sign having a direct relationship to the brand name product which it shows and an indirect relationship as being location related to other products in that aisle.

One of ordinary skill in the art, when considering the claimed invention as a whole, would have been led away from including **plural different brand name product representations** in a number at most reflecting a small fraction of the number of location related products, as claimed, on the display sign G of Ramey because doing so would appear contrary to the fundamental teachings of Ramey, and would serve to frustrate and/or destroy the indexing system utilizing the signs G of Ramey.

Ramey and Begum et al.

Starting at the paragraph spanning pages 13 to 14 of the Answer, the Examiner asserts that the Begum et al. patent was cited for a teaching of “putting brand names on product representations and Porter was used to modify the goods in the store of Ramey to contain goods that would have brand names, thus having more than one brand names on the sign of Figure 7 shown [sic].” However, it is respectfully submitted that the Begum et al. patent *teaches away* from the claimed features including plural different brand name product representations on each of plural display signs at least because Begum et al. would have been led one of ordinary skill in the art in a direction quite different from the path taken by Appellant.

More specifically, the Begum et al. patent is directed to a type of display sign that is primarily mounted to a pricing track of a supermarket product shelf (e.g., see column 2, lines 12-15), but can be mounted to an end of a gondola, a store wall, store appliances or other locations that can display the signboard (see, column 2, lines 48-51). This device includes a signboard that projects outwards from the shelf and has a small size to allow a customer sufficient space to peruse a store aisle where the device is supplied, but can be flexible and bendable to allow for inadvertent contact by the customer. Although Figure 1 of the Begum et al. patent shows “ACME” what appears to be a company name on the signboard 25 of a display sign 10, there is no description, suggestion or teaching in Begum et al. of providing **plural different brand name product representations** on one display sign, much less on each of plural display signs, as claimed. Furthermore, the Examiner has not articulated any

reasoning that would have explained why one of ordinary skill in the art would have been led to modify the Ramey sign in view of the Begum et al. patent to include **plural different brand name product representations**, as claimed.

To the contrary, the Begum et al. patent describes a type of small display sign that is used on a display shelf because most available locations for product advertising and promotion have been utilized (see, column 1, lines 40-46). One of ordinary skill in the art, using his/her common sense, would not look to the small signboard of the Begum et al. display sign as a practical way provide a display sign “located in, or proximate to, a related aisle, or positioned so as to be associated with said related aisle in a manner that each display sign is visible so that a shopper observing the sign is able to associate the sign with its related aisle and the products within that aisle,” as recited in independent claim 17. Indeed, it appears that the relatively small size of the Begum et al. signboard would draw the attention of a shopper only after that shopper has entered the aisle or is in close proximity to the signboard.

Moreover, it is believed the Examiner makes an impermissible leap in logic when asserting that the Begum et al. patent would have suggested replacing each of the different product representations on the signs of Ramey with brand name product representations to sell grocery items that consumers recognize and favor (see, page 16, lines 3-6 of the Answer), even if one were to consider, for the sake of argument, a grocery store using the display system of Ramey and including multiple brand name products in its inventory. As pointed out above, the Ramey display sign shown in Figure 7 is not the type of display sign to which the Begum et al. patent is directed, and the display system of the Ramey patent is not concerned with including any type of brand name recognition on the display sign. As pointed out starting on page 7 of Appellant’s Brief, the Ramey system is directed to helping a customer first identify a particular molding style (e.g., window and door style), and then locate a specific configuration of that molding style (e.g., ranch casing type) on the support member B of the display system (see, column 8, lines 37-60).

While one of ordinary skill in the art would perhaps consider modifying Ramey to include one or more small display signboards of Begum et al. along the

support member B to advertise or promote a single brand on each such small display signboard, there is no suggestion in Begum et al. to modify the display sign of Ramey's Figure 7 to include the claimed features related to **plural different brand name product representations**, as the Examiner suggests on page 16 of the Answer. As pointed out above, the Begum patent appears to actually *teach away* from such a modification.

The Declarations Under 37 C.F.R. § 1.132

Finally, in section h) on page 19 of the Answer, the Examiner appears to repeat the same assertions that were made on page 14 of the final Office Action. However, Appellant believes each of the items raised by the Examiner are fully addressed in the Third Declaration of Paul Enfield Under 37 C.F.R. § 1.132, which was submitted by the Appellant on April 7, 2009, and is attached as Exhibit B to the Evidence Appendix of the Brief. Furthermore, the Examiner's statements in section h) appear to imply that Appellant's statements of fact in his declarations are not supporting evidence. To the contrary, all statements in the declarations by the Appellant are sworn statements under Rule 1.132, and as such, are evidence. It is again respectfully requested that proper consideration be given to the declarations submitted by the Appellant.

Conclusion

Based on the foregoing, and in view of all the reasons provided in Appellant's Appeal Brief, the rejection under 35 U.S.C. §103(a) of independent claim 17 should be reversed. Likewise, the rejection of claims 18-27, which depend directly or indirectly from claim 17, should be reversed.

Respectfully submitted,

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